IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6150 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHIVABHAI GANGARAMBHAI PATEL

Versus

DIST MAGISTRATE

Appearance:

1. Special Civil Application No. 6150 of 2001

MR BN PATEL for Petitioner No. 1

MR SS PATEL AGP for Respondent No. 1-2,4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner who has been detained by the District Magistrate, Banaskantha at Palanpur vide order dated June 4, 2001, Annexure A to the petition, in

exercise of powers conferred under sub-section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), has challenged the said order and prayed to quash and set aside the said order and to set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is running a fair-price shop at Morvada, Taluka Vav, District Banaskantha, who has been assigned the work of distributing essential commodities to the ration-card holders. During the investigation it was found that the essential commodities which were supplied to the petitioner for distributing among the ration-card holders who are affected in earthquake have not been distributed to them and sold them in open market and thereby the petitioner has indulged in blackmarketing which is prejudicial to the maintenance of supply of the commodities essential to the community and the public at large and therefore the detaining authority considered it necessary to detain the petitioner on the grounds stated in the grounds of detention.

3. The petitioner has challenged the order of detention on various grounds. However, Mr. B.N. Patel, learned advocate for the petitioner has restricted his arguments to the point of non-supply of legible copies of the documents relied upon by the detaining authority while recording the order of detention which has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority. He also contended that there is total non-application of mind on the part of the respondents in passing the impugned order of detention. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

4. Mr. S.S. Patel, learned AGP who appears for respondent Nos.1, 2 and 4 has produced on record the reply affidavit of Mr. M.K. Das, IAS, the District Magistrate, Banaskantha who is the detaining authority and also a reply affidavit sworn by Mr. P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, and contested the petition. However, he does not disputed the fact that some of the pages of the documents supplied to the petitioner by the detaining authority are illegible. He therefore urged to pass appropriate order in light of the settled principles of law enunciated by this Court in this regard. Ms.

Davawala, learned advocate appearing on behalf of respondent No.3 has produced on record the reply affidavit sworn by Mr. S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. In the facts and circumstances of the case, she also urged to pass appropriate orders in light of the law laid down by this Court in this regard.

5. I have heard the learned advocates appearing for the parties. I have also gone through the impugned order of detention, the annexures attached therewith and the judgment cited at the bar.

6. On going through the documents annexed to the petition, it is clear that certain pages of some of the documents are not legible and this would amount to non-communication of the grounds and it has adversely affected the right of the petitioner of making an effective representation to the detaining authority. Mr. S.S. Patel, learned AGP also does not dispute this fact. Therefore, on this ground alone, the detention order is vitiated.

7. Similar question arose before this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the right of the petitioner's of making effective representation to the concerned authority and, therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the present case, at the cost of repetition, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

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